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CUMMINS et. al. v. BEAVERS.

November 23, 1904.

[48 S. E. 891.]

VENDOR AND PURCHASER—OPTION—VALIDITY—EXTENSION—SPECIFIC PERFORMANCE—PURCHASER WITH KNOWLEDGE.

1. In a suit for specific performance of a contract to convey, a defendant claiming to have purchased under a prior option, which had in fact expired before defendant purchased, cannot object that the consideration for plaintiff's contract was not paid when the contract was executed.

2. That an option to purchase land is taken by the purchaser as a speculation does not render it fraudulent.

3. An option to purchase land, based on a valuable consideration, may be specifically enforced by the holder of the option.

4. An option to purchase land is valid and specifically enforceable, though the consideration is not paid until some time after the option is given.

5. Where, on the date an option for the purchase of land expired, the purchaser stated that he would not take the land, but refused to give up the written contract, stating that he would give up the contract if he did not buy within the two weeks, the statement of the vendor that he would return in two weeks was not an extension of the option.

6. An option to purchase land cannot be extended by parol and without consideration, so as to prevent withdrawal at any time before acceptance.

7. A person purchasing land with knowledge that another has an enforceable option to purchase may be required to convey to the holder of the option.

WILLIAMS v. MATTHEWS.

November 23, 1904.

[48 S. E. 861.]

CORPORATIONS—STOCK SUBSCRIPTIONS—CONSTRUCTION—LIMITATION OF ACTIONS—AMENDMENT OF CHARTER.

1. In subscribing for corporate stock, defendant agreed to pay for same "one dollar down at the time of subscription, one dollar per share at the call of the board of directors, and one dollar per share every sixty days thereafter, if needed, until the whole amount is paid." The prospectus, which was made a part of the contract, recited that "one dollar per share is to be paid at the time of subscription, one dollar per share at the call of the board of directors, and one dollar per share every sixty days thereafter, until by a sale of the lots of the company such payment shall be declared unnecessary by the board of directors." *Held*, that the words "if needed," in the original contract, did not render the time for payments indefinite, but, in connection with the prospectus, the installments became due automatically after the first call, so that the statute of limitations commenced to run from the time each installment became payable after the first call.

2. Act Jan. 9, 1892 (Acts 1891-92, p. 69, c. 38), amending the charter of a corporation, provided that all stockholders paying 50 per cent. of the par value

of their stock shall not be "liable for further assessments thereon for debts or liabilities of the company contracted after the passage of this act." *Held*, that the act did not affect the original contract of subscription, so far as the demands of existing creditors were concerned.

GWINNER v. MICHAEL et al.

November 23, 1904.

[48 S. E. 895.]

QUIETING TITLE—EVIDENCE.

1. D contracted to sell certain land to K, but failing to deliver a deed during K's life, executed a deed to K's heirs for certain other land in place thereof. They, discovering the difference after D's death, sued to recover the land originally contracted to be sold, and, a part of that land having been conveyed by D to others, a decree was entered directing conveyance of the remainder thereof and payment of the value of that sold and a cancellation of D's deed for the land first conveyed. D devised to a certain woman and her children, under whom plaintiff claimed, certain similar land owned by him, to be selected by them, but in the administration of D's estate the land so selected was sold to pay debts in a proceeding to which such devisees were parties, and to which sale the record failed to show they objected. *Held* that, since the land surrendered by the heirs of K passed to the heirs of D, and not to his devisees, such facts were insufficient to establish any interest of plaintiff in such lands.

YOST v. RAMEY et al.

November 23, 1904.

[48 S. E. 862.]

EXECUTORS—BONDS—CONDITIONS—VALIDITY—EFFECT—LEGAL DURESS.

1. Where an executor's bond, given after Code, sec. 177 [1 Code 1904, p. 99], took effect, which requires such bonds to contain a waiver of any right to discharge any liability to the state with coupons detached from state bonds, contained instead a provision waiving right to discharge any liability except in legal tender currency of the United States, as provided by Acts 1884, pp. 24, 25, c. 22, which was superseded by Code, sec. 177 [1 Code 1904, p. 99], such fact did not render the bond invalid as a statutory bond, but it bound the obligees to the extent of the remaining valid provisions.

2. Where a surety on an executor's bond authorized his attorney in fact to execute for him, as one of the sureties, "the bond required by the court," and the bond, as executed, so far as it was valid, did not contain any provision in excess of the statute, the surety was not relieved from liability because the bond contained one provision which was invalid and in excess of the authority conferred.

3. Where an executor was required by the court to execute a statutory bond for the faithful performance of his duties, such bond was not void because it contained an invalid provision, on the ground that it was executed under legal duress.